



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rocky International Investment Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover losses of revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties agreed on their exchange of evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began on April 01, 2011 and ended May 31, 2014. Rent in the amount of \$840.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$390.00 which they retain in trust. Despite the annum dates of 2013 within the tenant's Notice, the landlord received the tenant's written Notice to vacate (Notice to End) on May 01, **2014**, for the tenant to vacate the rental unit May 31, 2014. The landlord provided the tenant's Notice to End. The landlord stated that they orally asked the tenant to vacate at the end of June 2014 but did not receive a response. The tenant disputed the landlord's claim. The landlord

testified they tried to re-rent the unit for June 2014 but were unsuccessful. As a result the landlord seeks loss of revenue for the following month of June 2014 as the tenant provided their Notice to End one day later than required by the Act. The landlord did not support their testimony in this claim with additional evidence.

The landlord seeks \$160.00 for damage to the unit. The landlord claims the tenant did not wash the drapes, or “clean” the carpets, although they acknowledge the carpets were vacuumed. The landlord also claims the tenant broke a light switch faceplate and that the washroom door was left with a hole in it. The landlord testified that the tenant was advised that the drapes required cleaning and that carpets required cleaning, although the parties acknowledged the tenancy agreement is silent on both matters and these requirements are not spelled out in any other document. The landlord provided the move / move out condition inspections report (CIR) which the tenant acknowledges signing at the start of the tenancy, but with which they did not agree at the end of the tenancy and were not required by the CIR to confirm at the end of the tenancy. The tenant testified they received some photographs. The landlord claims they may have sent some photographs to the Branch in respect to their claim, but were not sure as they were not responsible for sending them. Regardless, the tenant testified they categorically denied the landlord’s claims as the claimed damage was there at the outset of the tenancy and that there was no oral or written agreement with the landlord they were required to have the drapes washed or the carpeting “cleaned” at the end of the tenancy.

Analysis

On preponderance of the evidence before me, I find that while the Act requires tenants to give one full month’s notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice – in this case, June 2014. However, **Section 7** of the Act provides as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The landlord bears the burden of establishing their claim by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the losses claimed. In this case, the landlord provided evidence to support the first part of the test established by Section 7(1) of the act. However, the landlord failed to meet the second part of the test established in section 7(2) in that they did not provide evidence of what efforts, or more specifically, reasonable efforts they made to minimize their losses of rent revenue for June 2014; nor did the landlord provide evidence in respect to costs associated with their damages claims. I find I have not been provided evidence to support the landlord's claims that the tenant was contractually obligated to have the drapes washed, or the carpets "cleaned", other than for both to be left *reasonably clean and undamaged except for reasonable wear and tear*, as required and prescribed by Section 37(2)(a) the Act. As a result of all the above, **I dismiss** the landlord's claim without leave to reapply.

It must be noted that *Residential Tenancy Policy Guideline #17*, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been dismissed in its

entirety without leave to reapply it is appropriate that I Order the return of the tenant's security deposit. I so Order and will provide the tenant a Monetary Order in the amount of **\$390.00**, with no applicable interest.

Conclusion

I Order that the landlord return the security deposit of \$390.00 to the tenant. I grant the tenant an Order under Section 67 of the Act for the amount of **\$390.00**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: October 14, 2014

Residential Tenancy Branch

